IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Single Bench

MCC NO. 122 OF 2004

IN THE MATTER OF :-

PETITIONER : **M/S. INDIAN SPECIALITY FATS LIMITED** (Formerly known as Allied Oil Industry (P) Limited) a company incorporated under the Companies Act, 1956 having its registered office at Maidanpath (Shanti Sada), Choubey Colony, Raipur (C.G.) and a factory at Sirgitti Industrial Area at Bilaspur 495 004 (C.G.)

P. R. No. 19631/4 Dt. 31-8-04 Presented by Shri ... dated ... 31-8-04

VERSUS

RESPONDENTS :

1. **THE STATE OF CHHATTISGARH,** Through the Chief Secretary to the Government of C.G., Matralaya, G.E. Road, D.K.S. Bhawan, Raipur (C.G.)
2. THE PRINCIPAL SECRETARY Government of C.G., Department of Forest, Mantralaya, D.K.S. Bhawan, G.E. Road, Raipur (C.G.(

Xerox Copy 31/8/04 Block No. A 69, Bilaspur

NOTARY Ph.2223774 Feroze Hussain NOTARY (ADVOCATE) RAIPUR DISTRICT RAIPUR (M.P.) INDIA REG. No.-M.P. 21.3.93 GOVT. OF CHHATTISGARH.

APPLICATION UNDER SECTION 11(6) OF THE ARBITRATION AND CONCILIATION 1996 FOR THE APPOINTMENT OF A SOLE ARBITRATOR BY THE HON'BLE COURT.

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09/09/2005: -

Shri B.P.Sharma, learned counsel for the petitioner.
Shri V.V.S.Moorty, learned Dy. A.G. for the State/respondents.

The application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') has come up before me on being designated for appointing an arbitrator, by the Hon'ble Chief Justice of Chhattisgarh High Court.

It is submitted by learned counsel for the petitioner that the petitioner earlier incorporated as Allied Oil Industries Pvt. Ltd. under the Companies Act, 1956, subsequently, changed to Indian Speciality Fats Ltd as per resolution of the Company, was selected as entrepreneur for setting up Sal seeds based solvent extraction plants registered for Bastar, Raipur, Bilaspur and Mandla along with three other Companies described in paragraph 4 of the application. The petitioner as also other selected Companies entered into separate similar Agreements for supply of Sal seeds with the State of M.P. vide Agreement dated 16.11.1983 of Annexure P/3. The Agreement contains arbitration clause No. 23 which stipulates that;

> "In the event of any dispute or difference arising between the parties to this agreement on any matter with respect to this agreement or any of the provisions herein contained or anything arising hereto, except in respect of any matter on which the decision is hereinbefore declared to be final and binding, it shall be referred to the

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Secretary to the Government of Madhya Pradesh, Forest Department, Bhopal, whose decision thereon shall be final and binding on the parties."

He further submits that the Agreement of Annexure P/3 was valid for a period of 12 years commencing from 01st April 1984 to 31st March 1996 and the same has expired by afflux of time on 31st March 1996. However, as per Section 5-A of *Madhya Pradesh Van Upaj Ke Kararon Ka Punirakshan Adhiniyam, 1986*, the Agreement is deemed to be continued up to 31st December 1998. The petitioner claimed for the refund of excess payment to the extent of Rs. 119 lakhs towards the expenses component of price on ad-hoc basis and also to return the excess amount so recovered during the notified period vide memo of Annexure P/5.

However, the said claim was repudiated by respondent vide reply of Annexure P/6 and the respondent also encashed two bank guarantees furnished by the petitioner for a sum of Rs. 15,50,000/-, for due performance and observance of the terms and conditions of the Agreement of Annexure P/3 and adjusted the said amount towards their claim against the petitioner.

Learned counsel for the petitioner submits that a legal notice dated 20.12.2002 of Annexure P/7 was served by the petitioner to the State/respondents calling upon the respondents to nominate and appoint any retired Judge either of the Apex Court or of any High Court as the sole

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arbitrator to adjudicate upon and decide all the disputes and differences referred to hereinbefore, within 30 days from the date of receipt of the notice. However, since the respondents have failed to nominate and appoint a sole independent arbitrator, the instant application has been filed by the petitioner, praying that Mr. Ashok Masih, (Retired) Additional Chief Conservator of Forest or any impartial or independent person, preferably retired Judge of any High Court, may be appointed as a sole arbitrator in terms of arbitration clause No. 23 of the Annexure P/3.

In reply to the above application, the respondents have submitted that there is no such provision for invoking the arbitration proceedings in case of dispute in the Agreement and the dispute, if any, is to be referred to the Secretary, Forest Department of the State Government and whose decision is to be final and binding on the parties. It is further submitted that the instant application is also not maintainable on the ground of delay and latches as the last delivery of Sal seeds was effected in the year 1998 and Agreement between the parties stands terminated with effect from 31.12.1998. However, in reply it has been further submitted that if the Court feels that the dispute has to be referred to a sole arbitrator for adjudication, then the State/respondents do not have any objection if it is referred to the arbitrator as prayed for by the petitioner in the application filed under Section 11(6) of the Act.

The petitioner has filed a rejoinder wherein he has submitted that the Agreement of Annexure P/3 contains arbitration clause-23 which

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stipulates that in case of any dispute or difference, the same is referable to a sole arbitrator. It is also submitted in the rejoinder that to adjudicate similar disputes that had arisen between *M/s Sal Udyog (P) Ltd. Vs. State of C.G. and another*, the Hon'ble High Court had appointed Mr. Ashok Masih, Retd. Addl. Principal Chief Conservator of Forest as sole arbitrator vide order dated 21.03.2002 passed in M.C.C.No. 58/2001 (Annexure P/9). This fact has not been controverted by the respondents. Learned counsel for the petitioner has also submitted that the Hon'ble Apex Court in the matter of ***K.N.Oil Industries Vs. State of M.P.*** reported in ***AIR 1986 SC 1927***, in which the petitioner was also a party, had interpreted clause-23 of the Agreements in paragraph-6 of the reported judgment and directed that the dispute arising out of the Agreement may be adjudicated by arbitration as provided in clause 23 of the Agreement. It is further submitted that the instant application has been filed within three years from the date, the cause of action arose to the petitioner on 31.12.1999, when the respondents rejected the claim of the petitioner vide reply of Annexure P/6 and the prayer for appointment of arbitrator through legal notice sent on 20.12.2002 well within the time, was turned down.

I have heard learned counsel for the parties.

Apart form the objections raised in the reply to the application for appointment of a sole arbitrator, learned counsel for the State Shri Moorty, fairly concedes that as in other cases arising out of the identical Agreements, having the same arbitration clause-23, appointment of sole

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arbitrator was made for adjudication of the disputes arising out of the Agreement, the dispute arising between the present parties is also referable to the arbitrator under clause 23 of the Agreement and the State has no objection if a sole arbitrator, as prayed for by the petitioner in the instant application, is appointed.

From perusal of the claims and counter-claims of the parties, a case for appointment of an arbitrator is held to be made out. As a result, the application is allowed. However, in view of the fact that the amount of claim is more than rupees one crore, it would be just and proper to appoint a retired Judge of the High Court as a sole arbitrator.

However, at the time of hearing it was submitted by the parties to the proceedings that they have no objection if any honourable retired Judge of this High Court is appointed as the sole arbitrator to adjudicate the disputes.

In view of the above, I hereby, therefore, appoint Mr. Justice A.S.V.Moorty, former Chief Justice of High Court of Chhattisgarh, V-87, Vth Avenue, Annanaga, Chennai-600040, Ph.No. 26214465.

The Hon'ble Arbitrator may settle his terms and conditions and remuneration.

Registry to intimate Hon'ble Mr. Justice A.S.V.Moorty, former Chief Justice of High Court of Chhattisgarh, about his appointment as Arbitrator and to send all the papers along with the address of the parties.

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	Parties are also directed to approach Hon'ble Mr. Justice A.S.V.Moorty, who is presently residing at Annanagar, Chennai and to submit papers and to take part in the arbitration proceedings. **Sd/-** **Dhirendra Mishra** **Judge**	